

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

WILLIAM PALMER, KITSAP ALLIANCE OF
PROPERTY OWNERS, and JACK
HAMILTON,

Petitioners,

v.

KITSAP COUNY and KITSAP REGIONAL
COORDINATING COUNCIL,

Respondents.

CASE NO. 12-3-0003

(Palmer)

ORDER OF DISMISSAL

I. BACKGROUND

This matter came before the Board on the dispositive motion of Respondents Kitsap County and Kitsap Regional Coordinating Council (KRCC).¹ On January 13, 2012, William Palmer, Kitsap Alliance of Property Owners and Jack Hamilton filed a petition for review (PFR) challenging Kitsap County's adoption of Ordinance No. 476-2011. Ordinance No. 476-2011 amended the Countywide Planning Policies (CPPs) as recommended by the KRCC.

Prior to the Prehearing Conference, Kitsap County moved to dismiss the petition, asserting (1) only cities or the governor have standing to challenge the adoption of CPPs, (2) the PFR fails to state any valid claim for the Board's review, and (3) KRCC is not a proper respondent in an appeal to the Board. The Board issued a Revised Notice of Hearing, setting a date for Petitioners' response² and providing for oral argument on the motion to be heard at the Prehearing Conference.

¹ Motion to Dismiss, Jan. 27, 2012

² The time to respond to a motion was extended by three days.

1 The Prehearing Conference was convened telephonically on February 13, 2012, with Board
2 panelists Margaret Pageler, Nina Carter,³ and Joyce Mulliken⁴ in attendance. Petitioners
3 William Palmer (pro se and representing KAPO) and Jack Hamilton were present. Kitsap
4 County was represented by Deputy Prosecutor Shelley Kneip.⁵ At the Prehearing
5 Conference the Board heard oral argument on the motion to dismiss. The Board waived the
6 rules⁶ to allow subsequent briefing. Petitioners' Response to Motion to Dismiss was filed
7 February 21 and Kitsap County's Reply re: Motion to Dismiss was filed February 23.
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10 II. APPLICABLE LAW

11 RCW 36.70A.210 contains the GMA provisions for countywide planning policies. The
12 **process for adopting CPPs** is laid out in RCW 36.70A.210(2) as follows:
13

- 14 a) No later than sixty calendar days from July 16, 1991, the legislative authority of
15 each county that as of June 1, 1991, was required or chose to plan under RCW
16 36.70A.040 shall convene a meeting with representatives of each city located
17 within the county for the purpose of establishing a collaborative process that will
18 provide a framework for the adoption of a countywide planning policy. ...
19
20 b) The process and framework for adoption of a countywide planning policy
21 specified in (a) of this subsection shall determine the manner in which the county
22 and the cities agree to all procedures and provisions including but not limited to
23 desired planning policies, deadlines, ratification of final agreements and
24 demonstration thereof, and financing, if any, of all activities associated therewith.
25
26 c) [Governor may impose sanctions for county's failure to convene meeting with
27 cities.]
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29 d) [Governor may require mediation and impose sanctions if county and cities fail to
30 agree.]
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30 ³ Board member James McNamara, originally assigned to the panel for this case, has resigned from the board,
31 and Nina Carter is assigned in his place.

31 ⁴ Board member Joyce Mulliken was not available for issuance of this Order.

32 ⁵ Ms. Kneip was accompanied by Kitsap County DCD Director Larry Keeton and KRCC Executive Director
Mary McFleur.

⁶ Pursuant to WAC 242-03-530(14)

1 e) No later than July 1, 1992, the legislative authority of each county that was
2 required or chose to plan under RCW 356.70A.040 as of June 1, 1991, ... shall
3 adopt a countywide planning policy according to the process provided under this
4 section and that is consistent with the agreement pursuant to (b) of this
5 subsection, and after holding a public hearing or hearings on the proposed
6 countywide planning policy.

7 Thus the county and its cities through a “collaborative process” establish the “process and
8 framework” for adoption and ratification of countywide planning policies. The county
9 legislative authority adopts the CPPs according to the process agreed on in the city/county
10 collaboration, and “after holding a public hearing or hearings.”

11
12 **Appeal of CCPs to the Board** is set out in RCW 36.70A.210(6) which provides:

13 *Cities and the governor* may appeal an adopted countywide planning policy to
14 the growth management hearings board within sixty days of the adoption of the
15 countywide planning policy.

16 **Multi-county planning policies** are addressed in RCW 36.70A.210(7):

17 Multicounty planning policies shall be adopted by two or more counties, each
18 with a population of four hundred fifty thousand or more, with contiguous urban
19 areas [i.e. Pierce, King and Snohomish counties] and ***may be adopted by other***
20 ***counties***, according to the process established under this section or other
21 processes agreed to among the counties and cities within the affected counties
22 throughout the multi-county region.

23 III. DISCUSSION AND ANALYSIS

24 KRCC is a multi-jurisdictional entity established under the Interlocal Cooperation Act.⁷
25 KRCC consists of representatives from Kitsap County, the four Kitsap cities (Poulsbo, Port
26 Orchard, Bremerton, and Bainbridge Island), and the Port of Bremerton.⁸ The Suquamish
27 and Port Gamble S’Klallam Tribes and Naval Base Kitsap are non-voting members. KRCC
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⁷ Ch. 34.94. RCW.

⁸ Ordinance 476-2011, Section 2.A

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1 does not adopt a comprehensive plan or development regulations. Rather, it is the forum
2 through which Kitsap County and its cities develop CPPs and coordinate land use matters.⁹

3
4 In 2010 KRCC began a process to update Kitsap Countywide Planning Policies to make
5 them consistent with Puget Sound Regional Council's multicounty planning policies.¹⁰
6 KRCC held a public hearing January 2011 at which Petitioner Jack Hamilton "provided
7 extensive review comments."¹¹ KRCC forwarded its proposed CPP amendments to Kitsap
8 County in May to start the legislative process.¹² The County Commissioners held a public
9 hearing September 12 at which Petitioner William Palmer testified.¹³ The County adopted
10 the CPP amendments by Ordinance 476-2011 on November 14, 2011 and forwarded it to
11 the cities for ratification. Petitioners here challenge the adoption of Ordinance 476-2011.
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14 *The Board Lacks Jurisdiction to Hear a Challenge to the KRCC*

15 RCW 36.70A.280 provides:

16 (1)The growth management hearings board shall hear and determine only those
17 petitions alleging either:

18
19 (a)That, except as provided otherwise by this subsection, **a state agency,**
20 **county, or city planning under this chapter** is not in compliance with the
21 requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of
22 shoreline master programs or amendments thereto, or chapter 43.21C RCW as it
23 relates to plans, development regulations or amendments, adopted under RCW
36.70A.040 or chapter 90.58 RCW.¹⁴

24 The Board finds that KRCC is not a state agency, county or city. The KRCC is a forum for
25 county/city collaboration in developing CPPs and coordinating land use matters. KRCC
26 does not adopt CPPs, nor does it adopt or amend a comprehensive plan or development
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30 ⁹ Motion to Dismiss, at 2

31 ¹⁰ Ordinance, Section 2.B

¹¹ PFR at IV B

32 ¹² Ordinance, Section 2.D

¹³ PFR at IV.A

¹⁴ Emphasis added

1 regulations. In the present matter, KRCC recommended CPP amendments which were
2 adopted by the County after a public hearing.

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4 In *Kent Cares, et al. v Puget Sound Regional Council*,¹⁵ the Board dismissed a citizen
5 challenge to a policy adopted by the Puget Sound Regional Council. The Board stated the
6 PSRC is not a state agency, county or city; PSRC does not plan under the GMA; the
7 challenged PSRC policy was not a plan or development regulation or amendment thereto.
8 The Board concluded: "given the Board's limited authority and powers, the PFR lacks a
9 legal basis for Board review."¹⁶
10

11 Here the Board likewise concludes KRCC is not an entity subject to challenge before the
12 Board and KRCC has not taken any action subject to Board review. The Board therefore
13 lacks jurisdiction to hear a challenge to the KRCC and, as to KRCC, the petition must be
14 dismissed.
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17 *Petitioners Lack Standing to Challenge CPPs*

18 RCW 36.70A.210(6) provides:

19 ***Cities and the governor*** may appeal an adopted countywide planning policy to
20 the growth management hearings board within sixty days of the adoption of the
21 countywide planning policy.

22 Petitioners argue that because RCW 36.70A.210(6) does not say "only" cities and the
23 governor may appeal, it should not be read to exclude all other possible appellants.
24 Petitioners contend a narrow construction of this provision is contrary to the spirit and intent
25 of the GMA.¹⁷ In this matter, however, our Supreme Court has definitively interpreted the
26 CPP standing provision, saying unequivocally in *King County v. CPSGMHB*¹⁸:
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31 ¹⁵CPSGMHB Case No. 04-3-0011, Order of Dismissal (April 19, 2004).

32 ¹⁶ *Kent Cares*, at 3

¹⁷ Petitioners' Brief, at 2, 3

¹⁸ *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 167, 979 P.2d 374 (1999).

1 [T]he GMA does not provide for public challenge to CPPs. Only cities or the
2 governor may appeal a CPP to the Central Puget Sound Growth Management
3 Hearings Board (the Board); citizens may not appeal. RCW 36.70A.210(6).

4 The Growth Boards from all three regions have agreed, holding that citizen challenges to
5 CPPs are not permitted by the GMA. In *Sundquist Homes, Inc. v Snohomish County*,¹⁹ the
6 Central Board said:

7 The Board now specifically holds that RCW 36.70A.210(6) permits only a city or
8 the governor to appeal an adopted county-wide planning policy. The Act is clear
9 on this point.

10 In *Friends of Skagit County v Skagit County*²⁰ the Western Board said:

11 The Legislature was very specific in its drafting of Section .210. Only cities and
12 the Governor may challenge CPP adoption. Friends therefore has no standing to
13 challenge Resolution 16272.

14 In *PanESCO v. Benton County*,²¹ the Eastern Board said:

15 The Petitioner ... directly challenges CWPP #4 itself. The GMA does not allow
16 such an appeal. RCW 36.70A.210(6) allows cities and the governor to appeal
17 county-wide planning policies to the Board within sixty days of adoption, but
18 citizens have no such right.

19 In the matter before us, none of the Petitioners is a city or a governor. Thus the Board
20 concludes Petitioners lack standing to challenge Kitsap County's adoption of amendments
21 to its CPPs. While this result may appear contrary to the bottom-up, citizen-friendly process
22 which the GMA requires for city and county comprehensive plan adoption, the Act clearly
23 distinguishes the CPPs and provides unique procedures and appeal provisions.
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26 Because RCW 36.70A.210(6) is specific to CPPs, Petitioners cannot resort to other
27 provisions of the GMA in an effort to obtain standing. Adoption of CPPs cannot be
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30 ¹⁹ CPSGMHB Case No. 96-3-0001, Order Granting Snohomish County's Motion to Dismiss (Feb. 21, 1996), at
31 2; see also *1000 Friends of Washington v Kitsap County*, CPSGMHB Case No. 04-3-0031c, Order on Motions
32 (Mar. 15, 2005), at 5 ("Harless is barred from challenging the CPPs by RCW 36.70A.210(6) (only cities and the
governor may appeal adopted CPPs)."

²⁰ WWGMHB Case No. 96-2-0032, Order Granting Skagit County's Dispositive Motion Dismissing Issue 3.1
(CPP Amendment) (Mar. 7, 1997).

²¹ EWGMHB Case No. 07-1-0002, Final Decision and Order (July 27, 2007), at 4.

1 construed as enactment of a comprehensive plan or development regulation subject to a
2 citizen appeal under RCW 36.70A.280. As the Board pointed out in *Sundquist*:

3 If the legislature intended county-wide planning policies to be included within the
4 definition of comprehensive plans, it would have done so. Instead RCW
5 36.70A.210 contains a separate description of county-wide planning policies.²²

6 RCW 36.70A.210(6) is specific to CPPs and therefore it controls over the more
7 general language of RCW 36.70A.280(1)(a).²³

8 Petitioners in their Legal Issues A through D assert that various GMA public participation
9 provisions have been violated. However, each of these provisions addresses adoption or
10 amendment of comprehensive plans or development regulations, and does not apply to
11 CPPs.
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14 **Legal Issue A** alleges lack of notice in violation of RCW 36.70A.035. RCW 36.70A.035
15 provides:

16 (1) The public participation requirements of this chapter shall include notice
17 procedures that are reasonably calculated to provide notice ... of ***proposed***
18 ***amendments to comprehensive plans and development regulations.***

19 Petitioners complain the only notices provided were the legal notices of the public hearings.
20 But the more expansive notice provisions of Section .035 by their express terms apply to
21 *comprehensive plan and development regulation amendments*, not to countywide planning
22 policies. This section of the GMA does not give Petitioners standing to challenge the
23 process for adoption of CPPs.
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26 **Legal Issue B** alleges lack of coordination with adjoining counties in violation of RCW
27 36.70A.100. RCW 36.70A.100 provides:

28 The ***comprehensive plan*** of each county or city ... shall be coordinated with and
29 consistent with the comprehensive plans [of adjacent counties or cities.]
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²² *Sundquist*, at 3

²³ *Sundquist*, at 3

1 Petitioners say there's no documentation of coordination with Pierce, Jefferson, Mason or
2 King County.²⁴ But Section .100 by its terms requires coordination of *comprehensive plans*,
3 not countywide planning policies. This provision does not confer standing for a citizen
4 appeal of CPPs.

5
6 **Legal Issue C** alleges failure to establish a citizen participation program in violation of RCW
7 36.70A.130(2). RCW 36.70A.130(2) provides:

8 Each county and city shall establish and broadly disseminate to the public a
9 public participation program consistent with RCW 36.70A.035 and .140 that
10 identifies procedures and schedules whereby **updates, proposed amendments,**
11 **or revisions of the comprehensive plan** are considered by the governing body
12 of the county or city

13 Again, Section .130(2) applies to *amendments of comprehensive plans*, not CPPs. Section
14 .130 provides no basis for Petitioners' challenge to the County's process for amendment of
15 its CPPs.

16
17 **Legal Issue D** alleges failure to be guided by public participation provisions of RCW
18 36.70A.140. RCW 36.70A.140 provides:

19 Each county and city ... shall establish and broadly disseminate to the public a
20 public participation program identifying procedures providing for early and
21 continuous public participation in the **development and amendment of**
22 **comprehensive land use plans and development regulations** implementing
23 such plans....

24 Section .140 applies to *comprehensive plans and development regulations*, not CPPs.
25 Alleging a Section .140 violation does not create standing to challenge the process for
26 amendment of a CPP.

27
28 **Legal Issue E** alleges violation of RCW 36.70A.210 in adopting Multi-county Planning
29 Policies. Section .210(7) provides:

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²⁴ The PSRC includes Pierce and King Counties, so they presumably were part of the PSRC multicounty planning policies.

1 Multicounty planning policies shall be adopted by two or more counties, each
2 with a population of four hundred fifty thousand or more, with contiguous urban
3 areas [i.e. Pierce, King and Snohomish counties] and *may be adopted by other*
4 *counties, according to the process established under this section or other*
5 *processes agreed to among the counties and cities within the affected counties*
6 *throughout the multi-county region.*

7 Petitioners state Section .210 does not authorize a county to cede its legislative authority to
8 a quasi-governmental agency [PSRC], thus Kitsap's CPP amendments promoting and
9 implementing policies and programs of the Puget Sound Regional Council were beyond
10 what Section .210 allows.

11
12 However, the Board finds the GMA, in Section .210(7), expressly provides that "other
13 counties," by agreement with their cities, may adopt multicounty planning policies under the
14 process they have established for CPP adoption and amendment. On its face, Petitioners'
15 allegation does not alter the rule that only a city or the governor have standing to challenge
16 adoption of CPPs.

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18 Petitioners here have not asserted the County failed to follow the specific process for
19 adopting CPPs set forth in RCW 36.70A.210(2). Petitioners have acknowledged
20 participating in the public hearing required by Section .210(2)(e). They contend, however,
21 that because the CPP amendment at issue was adopted in a County legislative action taken
22 by ordinance, County compliance with other GMA provisions for citizen participation is
23 required, and that those provisions confer standing for a citizen appeal.²⁵

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26 Petitioners protest that the amended CPPs contain at least 118 mandatory measures –
27 "shall" or "must" directives – that will escape citizen review in subsequent plan amendments
28 and implementation by the county or its cities.²⁶

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30 Because of the ordinance adoption action taken by Kitsap County, there is no
31 later comprehensive plan or development ordinance process by which citizens
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²⁵ Petitioners' Brief at 2.

²⁶ Petitioners' Brief at 3-4

1 have available to them to seek redress to the mandates found in Ordinance 476-
2 2011.²⁷

3 However, the Board notes Petitioners are not foreclosed from challenging the CPP
4 provisions to which they object but may do so when the provisions are enacted in a
5 comprehensive plan or development regulation. In the *King County* case, the Supreme
6 Court held citizens are not precluded from challenging directive or mandatory CPPs when
7 implemented into a comprehensive plan or a development regulation.²⁸

9
10 In sum, under the GMA, only a city or the governor may appeal adoption of a CPP to the
11 Growth Board. Petitioners are not a city or the governor and thus they lack standing.
12 Petitioners cannot do an end run around this restriction by alleging violation of other GMA
13 provisions. Four of the provisions they rely on in fact address adoption or amendment of
14 comprehensive plans and development regulations, and do not apply to CPPs. The fifth
15 provision expressly allows the County's action complained of in the PFR.
16

17 The Board finds and concludes Petitioners lack standing to appeal Ordinance 476-2011,
18 and the case must be dismissed.
19

20 21 IV. ORDER

22 Based upon review of the Petition for Review, the briefs submitted by the parties, the GMA,
23 prior Board Orders and case law, having considered the arguments of the parties, and
24 having deliberated on the matter the Board ORDERS:
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30 ²⁷ Petitioners' Brief, at 5

31 ²⁸ *King County*, 138 Wn.2d at 176 -77: "Even if a county must follow uncontested CPP directives, once those
32 provisions are adopted into the comprehensive plan they become subject to citizen appeal. RCW 36.70A.280
allows provisions in comprehensive plan to be appealed by citizens and corporations. There is no statutory
language immunizing provisions of the comprehensive plan from review on the grounds that those provisions
are mandated by the CPPs."

1. The Board lacks jurisdiction to hear a challenge against KRCC.
2. Petitioners lack standing to challenge the County's adoption of Ordinance 476-2011.
3. The Petition for Review of *William Palmer, Kitsap Alliance of Property Owners, and Jack Hamilton v. Kitsap County and Kitsap Regional Coordinating Council* is **dismissed**.
4. GMHB Case No. 12-3-0003 is **closed**.

DATED this 27th day of February, 2012.

Margaret Pageler, Board Member

Nina Carter, Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-03-830.²⁹

²⁹ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-03-830, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-03-240(1).

The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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